Hartman D-4 (1913-1954) 1954 MI Middle East
Bedouin H34

which I was glad not to understand, but one of the Bedouin youngsters who were with us flared back at the townsman with remarks that reduced him immediately to unconditional surrender. Every noon and every night the boy took her some of our rice and bread, and she accompanied this men's caravan, entirely alone, till we arrived in the city. I remember that same boy's earnest and simple cordiality as he congratulated one of his warm friends on her recent marriage. "May God increase your property, your camels and your children."

It is interesting to observe the fundamental economic conceptions in a community as primitive as that of the desert. Contracts are sacred in Arabia, as in the West. The guest and his host are bound by a contract the terms of which are perfectly understood by both parties and are practically never violated. Many of these Bedouins enter into contracts to dive at the opening of the diving season in Bahrein, and one never hears of such a contract being broken. There is little occasion for the making of contracts in the desert, but even at the price of personal loss, a contract entered into in good faith must be carried out.

The Bedouin's conception of property, however, differs from ours considerably. To say that it is communistic is to exaggerate, but there is certainly a strange tinge of communism about it. Property, that is to say what the earth affords in the way of food, shelter and clothes, is of value because it sustains human life. The food, the clothes and the houses that the Bedouin's world can produce, are never enough to go around. He considers them valuable simply as they minister to human need. In the same property comes to be regarded as sacred, much as it is in the West. Beautiful houses are admired and

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• 421 luxury and display have a certain number of devotees. In the desert the viewpoint is very different. Human needs and rights are always and in all circumstances the most important thing and property rights are always subordinate to them. More than that, it follows that no one, whatever his station, is entitled to more than he needs of the scanty supply of food, clothing and shelter which the world affords until every one else has had all that he needs. Concerning the surplus over and above the subsistence requirements of the community the Arab has no definite convictions, but the man who desires to live in wasteful luxury, or who hoards wealth while his fellow tribesmen starve, may expect to be sent down very promptly to the eternal fire to roast where he belongs. It is on this foundation that the obligations of hospitality are built. The traveler is a man in need—in need of shelter and of food. The mere fact that he has no money to pay for these does not modify the situation in the slightest degree. His need, in and of itself, establishes his host's obligation to feed him. No possible notion of private ownership can in the Bedouin mind establish the right of the householder to his surplus so long as a hungry guest remains to be fed.

423 Land in the desert is free as the air. It is practically worthless in its sterile aridity, and there is nothing surprising in the fact that private ownership has not attempted to control it. Live stock is owned individually. 422, 425 This type of property, however, occupies a peculiar position. Animals are privately owned, but they are the object of never-ending raids, and property rights in them are almost as far removed from our notion of private property as from communism itself. Live stock remains

JORDAN BEDOUINS M34

running in from the desert and moving northward, can be observed in the geographic distribution of the population of Transjordan. The Southern Ma'an district and the parts east of the Hejaz railway are the domains of the Bedouin. Southern Belqa and the entire Kerak district are inhabited by semi-nomads, already settled on the land, but still living in tents and retaining their tribal organization. In Ajlun and the northern part of Belqa the settled villages predominate.

178
166x
131
166x

b. Economic factors and present change 166x

Bedouin settlement on land considerably progressed under the impact of:

a. development of the area with enhancement likelihood of pasture lands

b. the measures of the government

c. the examples of the sheikhs and their attempts to settle the tribesmen

CHAPTER I

Tribal land and the Role of the Sheikh in Bedouin Settlement Since the 19th Century 421 425

With the introduction of the Land Registration Law of 1929 most of the tribal land in the Ottoman Empire became the property of the sheikhs.

The individual tribesmen as well as the settled villagers

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421 considered the Ottoman Land Code of 1858 and the Registration
425 Law of 1859 as governmental measures designed for purposes of
taxation and military conscription. They left it to the village
notables and tribal sheikhs to enter all the land in their names.
During the second part of the 19th century the large landholdings
of the powerful sheikhs were substantially increased as the result
of the Sultan's policy to win their co-operation by gifts of land.
The developments during the 19th century thus laid the foundations
for the inequality of land-ownership which has become the scourge
of the Middle Eastern agrarian society.

421 As long as the patriarchal social order was maintained, the
425 economic life of the tribe was not disturbed by the growing con-
427 centration of land in the hands of the sheikhs. Part of the land
566 was cultivated by slaves or fellahin tenants, the rest used by
the tribesmen as grazing areas for their flocks of animals. But
when the tribal leaders began to evince an ever increasing inter-
est in agriculture, the semi-legal transfer of land, formerly the
collective property of the tribe, to the private ownership of the
sheikhs had the effect that the "private later paved" within the
democratic tribal society emerged as the big semi-feudal land-
lord.

421 The Mandatory authorities further strengthened the power of
566 the landlords by legal recognition of their rights to the lands
which they claimed as their own.

421 Progressive strides in the Arab countries are in favor of

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land reform on which successful tribal settlement will ultimately depend, but as the land-owning feudlike aristocracy clings to its privileges, the prospects for everyday changes do not seem bright.

Transformation of the Shaikh

With the process of pacification the tribal shaikh underwent a profound political and social transformation.

In the traditional tribal society tribe-tribal political relationships were confined to disputes over water and grazing rights. Since the 19th century shaikhs have become involved in big power politics. Bedouin history since the first World War abounds with cases of tribal chiefs being pro-occupied with the political issues of the country. At present the tribal leaders constitute a very active element in the parliamentary life of Syria and Iraq. While the shaikhs of the Transjordanian tribes have in the past not taken a prominent part in the political activities of their country, they have taken sides in the main controversial issues of anglophile government circles versus pan-Arab, anti-foreign Nationalists. Nuri Pasha, the shaikh of the Shammar, was the avowed friend of the Nuri Said Government of Iraq, the shaikh of the Ruwalah was an active supporter of Fahsid.[1]

The social changes which the shaikhs undergoes are considerable. His household becomes substantially enlarged by addition of a great number of slaves, specialists in various trades. The wives of the shaikh have chamber maids at their disposal.

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1. Musil, 1928, pp. 180-183

b Dickson G-6 (1939-47) 1951 MS I Kuwait
Bedouins MS4

CHAPTER XXXIII

Camel Disputes

In the Arab States of Arabia proper, the rights of an individual over his camel are looked upon as more sacred perhaps than life itself. It is possible that there may be slight differences in custom and details in various parts of Arabia, but speaking generally, the rules given below will be found to be understood and prevail in most of North-Eastern and Central Arabia. I cannot speak for Oman, Yaman and the Hijaz, but I see no reason to suppose that the basic principles of all desert camel laws are not the same. 421

After dealing with the important custom of *'Arafa*, I have touched on and given the meaning, as briefly as I can, of the Badawin terms *Jakhmah*, *'Iklimah*, *Tir-klah*, *Khidmah*, *Zakat*, *Khawah* and *Dhalikah* or *Marsilah*, all terms regularly heard in the desert man's daily life. I must express my thanks to His Highness the Shaikh of Kuwait and his able Lieutenant Shaikh 'Abdullah al Jabir who is responsible for Kuwait tribal affairs, for the great assistance they have given by helping me to collect the data necessary for this chapter.

GENERAL PRINCIPLES

1. *The case of camels belonging to individuals or tribes, straying with friendly tribes.* 421 629 425 681

(a) If one or more camels stray from a tribal herd and are later found with a friendly tribe, the owners can send in a demand for their return to the shaikh of the friendly tribe in question. Providing there is no undue delay, restitution is made and the matter ends.

(b) Should the strayed camel or camels not be returned, the owners have the right to watch their opportunity and seize property, livestock or even men belonging to the offending tribe, and

A Dickson G-5 (1919-47) 1951 MI 1 Kuwait
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421 628 425 681

retain such in their possession until their own plundered property is surrendered.

(c) Should the offending tribe still be obstinate (*a'asin*) and not return the camels, then the complainants have the right to hold what they have seized and must be satisfied with this. It is presumed that they have seized and held a number of camels equal to the number lost, neither more nor less.

II. *The case of camels straying away to a hostile tribe.*

The owner of the camel awaits his opportunity, and has the right to seize his enemy's camels and as many as he likes besides, by raid (*ghazzu*) or other stratagem, on the grazing grounds of the desert, in the summer or spring months, or on the caravan routes when his enemy visits a town or settlement to purchase supplies.

The injured party (owner of original stolen camels) retains what he has thus acquired from the enemy as a right, or he can make conditions with the enemy as he pleases. He can also if he likes cry "quits" entirely, provided everything is restored which he lost in the first place. Should blood be shed on such raids, the rule of the desert permits of revenge during five lives, that is to say, the party from whom a life has been taken, is entitled to kill a member of the slayer's family or tribe, down to the fifth generation, unless of course the family of the slain man agrees to accept *'idiyah* or *diya* (blood-money), which is generally computed in Najd and Kuwait to-day at Rials 800 (see Chapter XLII).

III. *The case of a tribe or tribes belonging to a recognised Government raiding camels of tribes belonging to another Government.*

The Government of the raided tribe has the legal right to claim the stolen property back from the Government of the guilty tribe or to claim money compensation. The compensation is assessed by mutual agreement. Should the guilty tribe, however, refuse to obey the order of its own Government, and it becomes impossible to recover the property stolen, then the injured tribe has the right

▷ Durham C-5 (1919-47) 1951 Bd 1 Kuwait
Bedouins 1474

to recover its lost property in its own time, and by whatever means it deems fit to employ.

IV. *The case of stolen or lost camels, recognized in a town or settlement by their original owners. (Both parties for example having come up to purchase supplies.)*

If the two parties are members of tribes which are friendly and on good terms with each other, and if their respective tribes are on good terms with, and under the authority of, the Ruler or Governor of the town in question, then the claimant must produce three witnesses to testify that the property he claims is his own. The words he himself uses to prove his claim before the authority hearing the case are, "I affirm that I neither sold nor gave away this my camel". Having completed this formality, the claimant will receive back his camel by order of the Ruler or Governor of the said town. (This sort of case frequently arises in Kuwait and towns in Najd.)

In the event of the person in possession of the camel having bought it from a third party unaware that it was the lawful property of a member of a friendly tribe, the procedure is different (see below). Again, if the person in possession of the camel has obtained it in war from a third party, the claimant will only receive it back if the custom of *'urfe* exists between his tribe and that of the person with whom the camel is found (see below).

V. *The case of a tribe of one Government attacking a tribe of another Government and a battle ensuing.*

The attacked tribe has the right to ask its Government to demand and recover full blood-money for its killed and injured from the Government of the guilty party. Should the complainant's Government not be in a position to exact reparation or come to an agreement with the aggressor's Government, either as to the blood-money due or to the terms of peace acceptable to the injured tribe, then the families of the victims have the right to take revenge in their own time and way, without being responsible to their Government in any respect. (V is similar to III.)

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"Recognition" of Camels

THE CUSTOM OF 'ARAFA OR "RECOGNITION" OF ANIMALS BY THE OWNER

421 I. *The case of camels captured in a raid.*

428 619 425 Should two tribes *sent'araf* to one another (have made the special *'araf* agreement between them), then one party may take from the other, camels once belonging to the former and now recovered from an enemy in raid, etc., by the latter.

Thus if a number of camels have been captured from the 'Ajman by the 'Awazim, and on some later occasion are recovered by the Murrah, the 'Ajman would have the right to take back their camels on application to the Murrah, without compensation, *provided the custom of 'Araf existed between the 'Ajman and the Murrah.*

421 619 671 425 II. *The case of camels bought from one person by another and later recognized by a former owner as having been stolen from him.*

The case is settled in this wise. If the purchaser and the original owner are of the same tribe, or belong to two tribes with a "special agreement" by which their relations are those of *Beni 'Am*, then the purchaser and the original owner, together with the animal in dispute, have to approach the seller and from him recover the purchase money. They give this to the man who has bought the camel, and the original owner takes back his property. For example, a man of Shammar recognizes a stolen camel of his with a man of the Dhafir, and the latter states he purchased it from the Murrah. Should the Dhafir and Shammar have a *Beni 'Am* arrangement between them, the men will both go and see the Murrahi. If the Murrahi had himself raided or stolen the camel from the Shammari, and the Murrah and the Shammar were at peace, he will return the purchase price to the Dhafiri, and the Shammari may then take the camel he claims. If the Murrahi has himself bought the camel from another, say an 'Ajmi, he will still pay back the price to the Dhafiri and will then go and claim his money from the 'Ajmi, and so on till they get back to the original thief. In other words, all intervening sales and purchases are step by step undone.

Principles of Camel Law

This method of friendly recovery of a man's camel is known as the *Sang wa Qaud* system, a sort of family arrangement for the recovery of animals by mutual consent and without quarrelling over the matter. This system has the advantage of keeping Government officials out of the business, which from the Bedawin point of view is always desirable. It is commonly practised in areas where Government writ does not run, and where one tribe is paramount under a strong shaikh who can enforce his will (example, the southern desert area of Iraq in Turkish times).

The system is open to variation according to circumstances, also to special arrangements between tribes, etc. So-called desert law is rarely a hard-and-fast thing. *Many* are the arbitrators who vary it slightly, or try to arrange a compromise in difficult or protracted cases. In most cases, however, precedent has a great deal to do with settling difficult problems, and so we have the *Ahl al Hall-wa-l* or experts, versed in legal precedent and able to state how difficult cases were formerly settled. These witnesses have much to do with the interpretation of desert law. Nevertheless the two main principles of *'urfs* remain fixed:

(a) A camel taken in war or reiders in war by a friend of the original owner is surrendered without compensation, if the custom of *'urfs* exists. There is no selling.

(b) No camel bought for money can possibly be taken back by the original owner without compensation, even if the original owner be of the same tribe as the purchaser. There is only one exception, namely, if the original owner can prove that the buyer when he purchased the animal *was aware that it had been* stolen from a man of a friendly tribe. Thus if the 'Awazim bought Diyabis raided camels from Ibn Shaqair the day after his raid on the Diyabis near Kuwait in 1918, the latter could recover their camels from the 'Awazim without compensation. In no other case can anyone retake a purchased animal and leave the purchaser a loser. All sales must be undone, back to the original theft.